

PD-0921-18

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
10/9/2018
DEANA WILLIAMSON, CLERK

MICHAEL BUCK,
Petitioner/Appellant

vs.

THE STATE OF TEXAS,
Respondent/Appellee

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**Eighth Court of Appeals
No. 08-16-00294-CR
Appeal from the 243rd
Judicial District Court
of El Paso County, Texas
TC No. 20160D01234**

**MOTION TO STRIKE AND SUBSTITUTE
APPELLANT'S PETITION FOR DISCRETIONARY REVIEW**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW Michael Buck and files this motion to strike his Petition for Discretionary Review as a nonconforming document and substitute the PDR filed (on August 29, 2018) by Nicholas Vitolo pursuant to Rule 9.4(k). TEX. R. APP. PRO. 9.4. In support of this motion, counsel would show the Court the following:

I.

A "pro se" PDR was filed and rejected on August 29, 2018 in the above case. The PDR was resubmitted and accepted the next day. This "pro se" PDR was efiled and purportedly signed by Michael Buck. In fact, Michael Buck did not prepare or sign this PDR. (see AFFIDAVIT, attached). If the PDR were truly pro se, it would violate 9.1(b) as Buck did not actually sign it. TEX. R. APP. PRO. 9.1.

II.

Undersigned counsel filed a PDR on behalf of Michael Buck on August 29, 2018. This Court rejected this PDR because the Court had already received the above mentioned “pro se” PDR.

Undersigned counsel discussed the matter with a Staff Attorney at this Court, who advised that the Court would accept counsel’s PDR instead of the “pro se” PDR if Michael Buck provided a specific and signed statement to that effect. The attached AFFIDAVIT of Michael Buck asks that this court accept undersigned counsel’s PDR and consider it in place of the “pro se” PDR.

III.

WHEREFORE, Mr. Buck prays the court will grant this motion to strike the non-conforming PDR and accept the previously submitted PDR from undersigned counsel. TEX. R. APP. PRO. 9.4.

Respectfully submitted,

EL PASO COUNTY PUBLIC DEFENDER

BY: /s/Nick Vitolo

NICHOLAS C. VITOLO

Assistant Public Defender

SBN 24084526

500 E. San Antonio, Room 501

El Paso, TX 79901

(915) 546-8185, FAX 546-8186

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for the Appellant was sent by e-mail using the EFile system to the District Attorney's Office at DAappeals@epcounty.com and the State Prosecuting Attorney at information@spa.texas.gov, and mailed to the Petitioner/Appellant MICHAEL BUCK on October 5, 2018.

/s/ Nick Vitolo
NICHOLAS C. VITOLO

MICHAEL BUCK

vs.

THE STATE OF TEXAS

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PDR No. PD-0921-18

AFFIDAVIT

1. My name is Michael Buck. I am over 18 years of age and I am fully competent to make this affidavit. I have personal knowledge of the matters stated herein. Every statement herein is within my personal knowledge and is true and correct.
2. I am currently jailed by the Texas Department of Criminal Justice at the Stiles Unit. My TDCJ number is 02091633.
3. After the Eighth Court of Appeals affirmed the conviction in my case, my attorney, Nicholas Vitolo, wrote me informing me of the decision. I misunderstood Mr. Vitolo when he wrote that he intended to file a PDR on my behalf. I want Mr. Vitolo to continue to represent me in the Court of Criminal Appeals.
4. I did not write, file, or otherwise work on or prepare the "PRO SE" petition for discretionary review filed in the Court of Criminal Appeals.
5. I want the PDR filed by Mr. Vitolo to be accepted as the PDR in my case instead of the one labelled "pro se" and already accepted.

INMATE JURAT – Civ. Prac. & Remedies Code § 132.001

My name is MICHAEL JERRY BUCK, my date of birth is 08/23/1953 and my inmate identifying number, if any, is 2091633. I am presently incarcerated in STILES UNIT TDCJ in BEAUMONT, _____, Texas, USA. I declare under penalty of perjury that the foregoing is true and correct. Executed on the 30th day of September 2018.


Declarant